

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL
RECEIVED
JUL 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of the Commission's)
Regulatory Policies to Allow Non-U.S.-)
Licensed Space Stations to Provide)
Domestic and International Satellite)
Service in the United States)

IB Docket No. 96-111

and)

Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only)
Earth Stations)

CC Docket No. 93-23
RM-7931

and)

COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules as it Applies)
to Services Provided via the Intelsat K)
Satellite)

File No. ISP-92-007

COMMENTS OF BT NORTH AMERICA INC.

BT NORTH AMERICA INC.

Joan M. Griffin
Cheryl Lynn Schneider
BT NORTH AMERICA INC.
601 Pennsylvania Avenue, N.W.
Suite 725
Washington, D.C. 20004

Joel S. Winnik
K. Michele Walters

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Dated: July 15, 1996

Its Attorneys No. of Copies rec'd
List A B C D E

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	2
II. IT IS UNNECESSARY AND IMPRACTICAL TO SUBJECT TRADITIONAL INMARSAT "DOMESTIC" SERVICES TO A COMPETITIVE ENTRY TEST.	4
A. Because the Traditional Inmarsat Services That the Commission Might Conceivably Classify as "Domestic" Have Limited, If Any, Competitive Implications, Application of a Competitive Entry Test Is Misplaced.	4
B. Subjecting Essential Traditional Inmarsat Services to a Competitive Entry Test at Some Arbitrary Geographical Boundary Raises Significant Safety and Access Concerns.	6
C. Distinguishing Between "Domestic" and International Traditional Inmarsat Services Would Be Arbitrary and Impractical.	7
D. The Commission's Tentative Proposal to Apply a Competitive Entry Test to Inmarsat's Provision of So-Called "Domestic" Services Is Contrary to Its Unified Market Policy For Satellite Services.	9
III. CONCLUSION	11

SUMMARY

The Commission should not apply a competitive entry test to any traditional Inmarsat service. The policy concerns that led the Commission to recognize correctly that subjecting international services to such a test makes no sense should also lead it to adopt the same regulatory approach for “domestic” services. Traditional Inmarsat aeronautical and maritime services offer unique, life-saving advantages that transcend geographic boundaries and preclude the application of an ECO-Sat or similar test.

The marginal competitive potential of the niche market for traditional Inmarsat services negates any gain from applying a competitive equivalency analysis. Actually, permitting the provision of traditional Inmarsat services would create the only practical source of competition in these limited markets. In addition, if the proposal to bifurcate international and domestic services is not abandoned, questions of interoperability and the potential for interruption in service would give rise to serious safety concerns. Similarly, adopting a policy based on such a geographical distinction would be arbitrary and unworkable in practice, as the Commission recently recognized in DISCO I, where it concluded that the globalization of satellite communications warrants a uniform regulatory approach. Limited competitive implications, safety and access concerns, and the infeasibility of distinguishing between domestic and international services should persuade the Commission not to subject traditional Inmarsat services to any competitive entry test.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL 15 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of the Commission's)
Regulatory Policies to Allow Non-U.S.-)
Licensed Space Stations to Provide)
Domestic and International Satellite)
Service in the United States)

IB Docket No. 96-111

and)

Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only)
Earth Stations)

CC Docket No. 93-23
RM-7931

and)

COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules as it Applies)
to Services Provided via the Intelsat K)
Satellite)

File No. ISP-92-007

COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. ("BTNA") hereby submits comments in response to the Notice of Proposed Rulemaking 1/ in the above-captioned proceeding. BTNA is a U.S. subsidiary of British Telecommunications plc ("BT"),

1/ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States . . . , Notice of Proposed Rulemaking, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007, FCC 96-210 (rel. May 14, 1996) ("Notice" or "DISCO II"). DISCO is an acronym for Domestic International Satellite Consolidation Order.

which provides global aeronautical and maritime telecommunications services by means of the International Mobile Satellite Organization ("Inmarsat"). 2/

I. INTRODUCTION

In its Notice, the Commission proposes a competitive entry test, dubbed an "ECO-Sat" test, to apply to the licensing of earth stations to operate with non-U.S. satellite systems. Recognizing the unique role played by intergovernmental satellite organizations ("IGOs") such as Inmarsat, the Commission correctly proposes not to apply any competitive entry standard to international communications through IGO satellites. However, the Notice does consider the adoption of a competitive entry standard for "domestic" services provided by IGO satellites. BT believes that, because of limited competitive implications, definitional problems, and overriding safety and access concerns, the Commission should abandon any distinction between international and domestic markets for traditional Inmarsat services. 3/

2/ Formerly, this organization was known as the International Maritime Satellite Organization.

3/ BT is the UK signatory to the Operating Agreement of Inmarsat. BT provides maritime, aeronautical and other telecommunications services using Inmarsat facilities in competition with other entities. This proceeding and the aeronautical proceeding, Report and Order, CC Docket No. 87-75, FCC 96-161 (rel. May 9, 1996), potentially affect the scope of Inmarsat-based operations, and they must reflect the mandates established in the Inmarsat Convention, the Inmarsat Operating Agreement, and the International Maritime Satellite Telecommunications Act ("Inmarsat Act"), 47 U.S.C. § 753 (c)(3)(A). In light of the unique and essential nature of maritime and aeronautical satellite communications, BTNA's comments on behalf of BT are limited to the Commission's proposals regarding traditional Inmarsat services

In the Notice, the Commission expresses “serious doubts” that making some type of competitive entry test a precondition for the provision of international service via Inmarsat “would be consistent with the statutes governing U.S. participation” in Inmarsat. Notice at ¶ 70. In fact, subjecting traditional Inmarsat services to a competitive market entry test would violate the Inmarsat Convention and the Inmarsat Act. Even in the absence of legal barriers, the public interest would preclude the imposition of a competitive entry standard on Inmarsat’s provision of essential safety and other services to ships and aircraft. Inmarsat is currently the only commercial global provider of satellite-based maritime and aeronautical safety and distress services. As the Commission acknowledges, Inmarsat is “the only two-way satellite communications system recognized today by the International Maritime Organization as a Global Maritime Distress and Safety System provider.” Notice at ¶ 70. In addition, Inmarsat satellites are often the only practical means of linking ships to shore and planes to ground, for non-safety communications. There is no reason to apply a competitive market entry test to the sole global provider of essential services.

The Commission in its Notice acknowledges the validity of these arguments in the context of international Inmarsat services. As shown below, the same arguments, and several related points, actually support the uniform treatment of all traditional Inmarsat services without regard to geographical distinctions. Because of limited competitive implications, the arbitrary nature of distinctions between international and “domestic” markets for Inmarsat services, and overriding safety and access concerns, the Commission should decline to apply

any competitive entry standard to the provision of traditional Inmarsat aeronautical and maritime services.

II. IT IS UNNECESSARY AND IMPRACTICAL TO SUBJECT TRADITIONAL INMARSAT “DOMESTIC” SERVICES TO A COMPETITIVE ENTRY TEST.

Although the Commission does recognize in the Notice the inappropriateness, and illegality, of applying the ECO-Sat test to Inmarsat in its provision of international services, the Commission stops short of following its reasoning to its logical conclusion -- that a competitive entry test should not apply to any traditional Inmarsat service without regard to arbitrary geographical distinctions. Instead, the Commission proposes to bifurcate the traditional maritime and aeronautical services into international and so-called “domestic” markets. Such a split has potentially anticompetitive and even safety ramifications, is logistically unworkable, and is inconsistent with established policies and decisions. Moreover, any geographical distinction is unenforceable because the Inmarsat service provider cannot in every instance determine the changing locations of its users. The service providers, therefore, should not be responsible for something over which they have no control.

A. Because the Traditional Inmarsat Services That the Commission Might Conceivably Classify as “Domestic” Have Limited, If Any, Competitive Implications, Application of a Competitive Entry Test Is Misplaced.

The only traditional Inmarsat services that might be considered “domestic” would be services to ships in U.S. territorial waters, services to aircraft in U.S. air space, and services to aircraft on the so-called “domestic legs” of

international flights. 4/ The potential for competition in these small niche markets is too limited to warrant application of a competitive entry test. Moreover, competition could be advanced by encouraging Inmarsat operations in these narrow markets, thereby eliminating, in at least this small respect, the effective monopoly of American Mobile Satellite Corporation ("AMSC").

The services at issue comprise a minor portion of "domestic" mobile satellite communications traffic. For example, as indicated previously, the domestic legs of international flights represented approximately two percent of all domestic and U.S. international flights. 5/ Application of any competitive entry analysis is not warranted because the use of Inmarsat facilities in such limited markets will not materially affect the economic viability of the single satellite operator now licensed to provide "domestic" mobile services.

In fact, opening up competition even in this limited fashion would benefit all users in these niche markets. The focus of the domestic satellite licensee is almost entirely on service to land-based mobile users. 6/ Inmarsat-based providers would provide this entity with competition, albeit in a few small markets, leading to greater efficiency, innovation, and lower prices.

4/ Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 96-161, File No. ISP-90-002 (rel. May 9, 1996).

5/ Petition for Reconsideration of British Telecommunications plc, CC Docket No. 87-175 (filed Sept. 14, 1989) (estimating the percentage of domestic segments of international flights relative to all U.S. air traffic).

6/ See, e.g., Memorandum Opinion, Order and Authorization, Gen. Docket No. 84-1234 (FCC 89-183) (rel. Aug. 4, 1989) at ¶ 47

B. Subjecting Essential Traditional Inmarsat Services to a Competitive Entry Test at Some Arbitrary Geographical Boundary Raises Significant Safety and Access Concerns.

No competitive entry test is appropriate where traditional Inmarsat services are the only practical means of providing safety and related services. In the aeronautical field, for example, there are barriers of interoperability between the domestic licensee and Inmarsat-based service providers. On information and belief, AMSC has not adopted the system specifications defined in AEEC Characteristic 741 ("C-741"). C-741 and the International Civil Aviation Organization's Standards and Recommended Practices ("ICAO SARPS") are the worldwide standards for international equipment and systems utilized by all Inmarsat-based aeronautical service providers. As the Commission itself recently noted in the aeronautical proceeding, "limiting the use of the Inmarsat system to beyond 12 nautical miles from the U.S. shore raises operational and reliability concerns in that it would require aircraft to switch providers of communications services at that point." ^{7/} This technical incompatibility would severely inconvenience passengers by unnecessarily depriving them of telephone service on domestic flight segments or in U.S. airspace, however the geographical distinction is defined (see infra Section II.C). It would also undermine Inmarsat's ability to provide continuous safety telecommunications services. In this regard, BTNA respectfully reminds the Commission of its stated commitment to the development

^{7/} Report and Order, CC Docket No. 87-75, FCC 96-161 (rel. May 9, 1996) at ¶ 23.

of practical safety and related aeronautical telecommunications services: "If the record demonstrates there is potential for interruptions in safety service due to the hand-off procedures at 12 nautical miles off-shore, we would not adopt this approach notwithstanding other considerations " 8/

No feasible alternative exists to circumvent this serious interoperability problem. Economic realities make it unlikely that either aircraft or, in most instances, ships will be equipped for operation with both the domestic licensee and Inmarsat-based systems. Surely, the FCC should not adopt a rule that would effectively require planes or ships to carry a second set of equipment. Due to the high cost of either carrying duplicate equipment or modifying Inmarsat's equipment and facilities to function in AMSC's system, and the limited potential for a viable return on investment in such a small market, the proposed distinction based on geographical boundaries should be discarded.

C. Distinguishing Between "Domestic" and International Traditional Inmarsat Services Would Be Arbitrary and Impractical.

There is no rational basis for distinguishing between "domestic" and "international" traditional Inmarsat services, nor is it feasible to effect such a policy. If a passenger on an aircraft of Dutch registry originates a call to France while the plane is in U.S. airspace, and the call is routed to its destination through an Inmarsat satellite and BT's earth station at Goonhilly, England, there is no

8/ Id. at ¶ 24.

logical reason to deem the call "domestic." Should it make a difference if the plane is of U.S. registry? What if the call destination is the U.S.? What if the flight made a first U.S. stop before proceeding to another U.S. destination? Rather than make such arbitrary distinctions, the Commission should recognize that there is no need to set up artificial geographic categories for traditional Inmarsat services.

Geographically-based restrictions on traditional Inmarsat services are impractical. An Inmarsat service provider does not track the location of an aircraft within the coverage area of the satellite through which communications are flowing. The Inmarsat provider has no basis for terminating service when the user approaches the U.S. border or instructing the aircraft earth station to transfer to AMSC at that point. In accordance with ICAO SARPS, an aircraft earth station remains logged onto the ground earth station it selected when entering the coverage area until it either exits that area or experiences an interruption in its communications (as in the event of a malfunction at the ground earth station). If communications through that earth station cannot be reestablished, the aircraft earth station will log on to another ground earth station. There is no mechanism within the ICAO SARPS for transferring communications from one satellite operator's system to another's. Because geographical boundaries are not recognized by ICAO-compliant AMSS systems as criteria for the selection of service providers, it would be impractical, if not impossible, to restrict the use of traditional Inmarsat service providers according to such boundaries. Similarly, ships should not be required to carry duplicative equipment or otherwise transfer service to the

domestic licensee at some arbitrary geographical point (the twelve mile limit? when resting in harbor?)

A competitive entry test that necessarily employs an arbitrary and unworkable geographical distinction serves only to protect the economic interest of AMSC, the sole domestic satellite licensee, at the expense of the public which depends on Inmarsat for safety and related services.

D. The Commission's Tentative Proposal to Apply a Competitive Entry Test to Inmarsat's Provision of So-Called "Domestic" Services Is Contrary to Its Unified Market Policy For Satellite Services.

To promote competition and respond to the realities of modern satellite telecommunications, the Commission should follow its own precedent and abandon its proposal to apply different standards to domestic and international traditional Inmarsat services. In Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Systems ("DISCO I"), 9/ the Commission recently eliminated the distinction between its policies for domestic and international satellite services treating all U.S.-licensed fixed satellite service systems, mobile satellite service systems, and direct-broadcast service systems under a single regulatory scheme. The Commission's findings in DISCO I are relevant to the issues addressed in DISCO II. In fact, the aeronautical and maritime context of this proceeding makes the adoption of a unified policy even more compelling here.

9/ Report and Order, IB Docket No. 95-41, 11 FCC Rcd. 2429 (1996).

In the DISCO I rulemaking, the Commission recognized that consolidating its separate policies for domestic and international services, which were adopted in 1981 and 1985, respectively, would eliminate outdated regulatory barriers to competition in satellite services. ^{10/} The Commission observed that, over the past decade, telecommunications users have an increasingly global perspective, and services, and the regulations governing them, must match this outlook. Thus, the Commission concluded that extending its prior policies would burden U.S. users and service providers with uncertainty and delay. "Given the globalization of communications needs, we do not believe it advisable to administer two separate policies when U.S. space station operators seek to offer similar services to similar geographic areas. Rather, we believe the public interest would be best served by modifying our policies to reflect the global nature of the telecommunications needs today." ^{11/}

Similarly, because Inmarsat is a global service, its ability to provide service should not be subject to special legal standards within certain designated geographic areas. As described above, meeting the needs of customers in a global society is even more important for air and sea communication, where national and land-based boundaries lose relevance, and concerns of safety and access are

^{10/} DISCO I at ¶ 1.

^{11/} Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Systems, Notice of Proposed Rulemaking, IB Docket No. 95-41, 10 FCC Rcd. 7789 at ¶¶ 16-17 (1995) (cited with approval in DISCO I at ¶ 9).

paramount. This increasing globalization, coupled with Inmarsat's inherent and unique role as a provider of aeronautical and maritime services, warrant the same regulatory unification and consistency adopted in DISCO I.

III. CONCLUSION

For the reasons stated above, the Commission should not adopt any competitive entry standard for Inmarsat services.

Respectfully submitted,

BT NORTH AMERICA INC.

Joan M. Griffin
Cheryl Lynn Schneider
BT NORTH AMERICA INC.
601 Pennsylvania Avenue, N.W.
Suite 725
Washington, D.C. 20004

Joel S. Winnik / kmw
Joel S. Winnik
K. Michele Walters

Dated: July 15, 1996

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 15th day of July, 1996, a copy of the foregoing Comments of BT North America Inc. was hand delivered to the parties listed below.


Kathy Bates

Dated: July 15, 1996

Don Gips, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Roderick K. Porter, Deputy Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kathleen Levitz
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Thomas Tycz, Chief
Satellite and Radiotelecommunication
Division - International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Fern Jarmulnek, Chief
Satellite Policy Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 500
Washington, D.C. 20554